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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,109	03/21/2002	Kent Abrahamson	6895.US.O1	3449
23492	7590	12/16/2003		
STEVEN F. WEINSTOCK ABBOTT LABORATORIES 100 ABBOTT PARK ROAD DEPT. 377/AP6A ABBOTT PARK, IL 60064-6008			EXAMINER THOMPSON, KATHRYN L	
			ART UNIT	PAPER NUMBER
			3763	9
DATE MAILED: 12/16/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/063,109

Applicant(s)

ABRAHAMSON ET AL.

Examiner

Kathryn L Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 and 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5, 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention: 1) Figures 1-2; 2) Figure 2A.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Upon election of a single species Applicant is also required to elect a single subspecies from the following patentably distinct subspecies: a) Figure 6; b) Figure 7. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Crabb on March 6, 2003, a provisional election was made without traverse to prosecute the invention of Species 1 and Subspecies a, claims 8, 10-12. Affirmation of this election must be made by applicant in replying to this Office action. Upon examination of the claims, Examiner believes that Claims 8, 10 and 12 are drawn to a non-elected species and subspecies. Therefore, Claims 8-10 and 12-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no disclosure in the specification of the claimed limitations of Claims 5 and 6.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "said first valve member" in Line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Line 31 of Claim 11, it is unclear as to which occlusion member Applicant is referring to. It is not clearly indicated whether Applicant is referring to the first occlusion member or the second occlusion member. Clarity is necessary since there are two types of occlusion members.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dockum et al (4,014,318), Davis (US 6,312,227), Bamberg (US 3,778,195), Pulman et al (US 3,658,445), and Briggs (WO 98/56453). All of the aforementioned patents disclose a pump comprising a blade having a leading portion having a length and a width, said leading portion constructed to engage a length of tube disposed in said tube set receiving portion, said blade mounted for reciprocating movement between a first position and a second position, a first occlusion member constructed to compress a tube disposed in said tube set receiving portion at a position upstream of said blade, a second occlusion member constructed to compress a tube disposed in said tube set receiving portion at a position downstream of said blade, a reciprocator, wherein said tube set receiving portion defines an engagement surface constructed to engage a portion of an exterior surface of a length of tube disposed in said tube set receiving portion, said engagement surface constructed to inhibit movement of a length of tube disposed in said tube set receiving portion when said blade is moved from said second position to said first position. Evidence of these teachings can be found in the following places in the following patents. Dockum et al : Figure 1, Column 2, Lines 39-54; Bamberg: Figures 3-7, Column 1, Line 67- Column 4, Line 2; Davis: Figure 1, Column 6, Line 66-Column 8, Line 65; Pulman: Figures 1, 2, 5, 9; Briggs et al: Figures 2 and 5.

Dockum et al (4,014,318), Davis (US 6,312,227), Bamberg (US 3,778,195), Pulman et al (US 3,658,445), and Briggs (WO 98/56453) do not disclose expressly that the length of the blade is between about 2 cm and about 12 cm. At the time the

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invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the length of the blade between about 2 cm and about 12 cm because Applicant has not disclosed that making the length of the blade between about 2 cm and about 12 cm provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the length taught by Dockum et al (4,014,318), Davis (US 6,312,227), Bamberg (US 3,778,195), Pulman et al (US 3,658,445), and Briggs (WO 98/56453) or the claimed length of the blade being between about 2 cm and about 12 cm. Therefore, it would have been an obvious matter of design choice to modify Dockum et al (4,014,318), Davis (US 6,312,227), Bamberg (US 3,778,195), Pulman et al (US 3,658,445), and Briggs (WO 98/56453) to obtain the invention as specified in Claims 1-7, and 11.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn L Thompson whose telephone number is 703-305-3286. The examiner can normally be reached on 8:30 AM - 6:00 PM: 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

KLT

*KLT*

*Brian L. Casler*

BRIAN L. CASLER

SUPPLEMENTARY PATENT EXAMINER  
TECHNOLOGY CENTER 3700